

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JUDICIAL WATCH, INC., CA No. 1:14-cv-01242

Plaintiff, Washington, D.C.
v. Friday, October 12, 2018
10:00 a.m.

U.S. DEPARTMENT OF STATE,
Defendant.

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TRANSCRIPT OF STATUS HEARING
HELD BEFORE THE HONORABLE ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Ramona R. Cotca, Esq.
JUDICIAL WATCH, INC.

Thomas J. Fitton, Corporate Designee

For the Defendant: Robert J. Prince, Esq.
Elizabeth J. Shapiro, Esq.
U.S. DEPARTMENT OF JUSTICE
Civil Division

Court Reporter: Timothy R. Miller, RPR, CRR, NJ-CCR
Official Court Reporter
U.S. Courthouse, Room 6722

Proceedings recorded by machine shorthand; transcript produced
by computer-aided transcription.

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: Your Honor, we have Civil
3 Action 14-1242, Judicial Watch, Inc. v. the U.S. Department
4 of State.

5 I'll ask that counsel please approach the lectern;
6 identify yourself and those at your respective tables,
7 starting with the plaintiff. Thank you.

8 MS. COTCA: Sure. Good morning, Your Honor.
9 Ramona Cotca for Judicial Watch and with me is Tom Fitton
10 representing Judicial Watch as a corporate designee.

11 MR. PRINCE: Good morning, Your Honor. My name's
12 Robert Prince from the Department of Justice representing
13 the Department of State. With me at counsel table is
14 Department of Justice Attorney Elizabeth Shapiro.

15 THE COURT: Okay. All right. I have been
16 awaiting discovery in other cases to progress and haven't
17 tried to take the lead myself, but I think the time has come
18 when I need to get this case concluded and I wanted to see
19 what I can do to get this case concluded. I will state how
20 I have looked at this case and then let you all each comment
21 on what we can do to wind this case up.

22 The case started with a motion for summary
23 judgment here and which I denied and allowed limited
24 discovery because it was clear to me that at the time that I
25 ruled initially, that false statements were made to me by

1 career State Department officials and it became more clear
2 through discovery that the information that I was provided
3 was clearly false regarding the adequacy of the search and
4 this -- what we now know turned out to be the Secretary's
5 email system. I don't know the details of what kind of IG
6 inquiry there was into why these career officials at the
7 State Department would have filed false affidavits with me.
8 I don't know the details of why the Justice Department
9 lawyers did not know false affidavits were being filed with
10 me, but I was very relieved that I did not accept them and
11 that I allowed limited discovery into what had happened.

12 Discovery's been ongoing in this and other cases
13 since that time and the Justice Department came back, then,
14 and wanted to renew their motion for summary judgment
15 without any explanation of what had occurred in the first
16 place, which I've never heard of never coming back and
17 explaining that you'd provided false information to the
18 Court or trying to justify what had happened before and just
19 think you could start all over. So I didn't accommodate the
20 Department by allowing you to file a new summary judgment
21 motion and thinking you could just start fresh.

22 I have been awaiting the -- I really was awaiting
23 most for the IG report from the Department of Justice
24 Inspector General. I did print out and read that 500-page
25 report when I got it and I was actually dumbfounded when I

1 found out, in reading that report, that Cheryl Mills had
2 been given immunity because I had -- in an earlier case
3 called Alexander v. FBI, I had myself found that Cheryl
4 Mills had committed perjury and lied under oath in a
5 published opinion I had issued in a Judicial Watch case
6 where I found her unworthy of belief, and I was quite
7 shocked to find out she had been given immunity in -- by the
8 Justice Department in the Hillary Clinton email case. So I
9 did not know that until I read the IG report and learned
10 that and that she had accompanied the Secretary to her
11 interview.

12 I did read in the 2017 memo that the Department
13 filed that she had been deposed in connection with these
14 email requests. And I guess what I need to start with is
15 the -- what it is that the plaintiffs think needs to be
16 done. I don't know the current status of the other cases
17 and what discovery remains to be concluded and where those
18 cases are. So I'll start with the plaintiffs of what they
19 think needs to be done to get this case in a posture where
20 we could wind up this case. This is just one of many cases
21 that relate to the same subject matter, but -- and I know
22 this is not a wide-ranging case itself, but the overall
23 subject of the search certainly is impacted by what happened
24 in this case. So let me start with the plaintiff's
25 explanation for what discovery you're still seeking here and

1 how we can resolve getting this case resolved.

2 MS. COTCA: Okay. Thank you, Your Honor.

3 Yes. So the focus -- and pursuant to the Court's
4 order, Judicial Watch had tried to be careful in its
5 discovery request and proposals not to overlap with the
6 discovery that Judicial Watch, in fact, was seeking in the
7 case that is still pending in front of Judge Sullivan,
8 13- --

9 THE COURT: And what's the status of that one now?

10 MS. COTCA: It is pending. I believe there's a
11 hearing scheduled for next month. There is a motion pending
12 to compel Secretary Clinton to provide more sufficient
13 answers, I believe, to her -- to the interrogatories that
14 were served on her, but with respect to depositions of
15 Cheryl Mills and the other officials that are in the
16 proposal, that has been completed. I can double-check when
17 I go back to my bench, but I believe that's the posture at
18 this point.

19 And with respect to even individual -- Cheryl
20 Mills, for example, is in our discovery proposal; however,
21 the subject matter and the questions that we'd be asking of
22 Cheryl Mills -- in fact, we tried to ask of Cheryl Mills in
23 the other case, but the State Department as well as the
24 attorney for Cheryl Mills objected and they did not -- she
25 did not respond to questions we were seeking with respect to

1 the collection of Secretary Clinton's emails; how did they
2 respond; and to FOIA requests as well as the Benghazi
3 requests, because one can reasonably presume that when
4 Secretary Clinton was preparing for her hearing testifying
5 before Congress and when the Accountability Review Board was
6 doing the investigation into what happened with the attacks
7 in Benghazi, that there were document requests and Cheryl
8 Mills's emails would have been at issue, but also, certainly
9 Secretary Clinton's emails would have come up during that
10 process, and that was when -- and the reason that's so
11 important is because the timing of that, that's when
12 Secretary Clinton was still the Secretary of the State
13 Department and the State Department officials would have
14 gathered the knowledge that they would have with respect to
15 answering those particular requests, but also, future
16 requests such as our request here in this case with respect
17 to talking points that were provided to then-Ambassador --
18 U.S. Ambassador to the U.N., Susan Rice.

19 So with respect to overlap, we have tried to be
20 very careful so there isn't overlap in the discovery that
21 has occurred and what we are seeking here. And more
22 generally speaking, there are two main, let's say, topics
23 that we're looking at or issues that we're seeking here.
24 One is evidence that would go to bad faith by the State
25 Department in responding to this specific request, and those

1 would be in the document requests -- I believe there are
2 about four of them that we've proposed -- as well as the
3 depositions that we requested; and then the other would be
4 remedies -- potential remedies because, at this point, we --
5 I believe in the case that's pending before Judge Boasberg
6 -- and I don't have the case number for you on that, but
7 that was where --

8 THE COURT: It was in the papers. I know.

9 MS. COTCA: Yes. And I believe the FBI has -- or
10 the State Department has completed production of all records
11 that the FBI have -- has recovered from the -- any backup
12 systems that they had from the server. And of the emails
13 that Secretary Clinton did not return, I believe the
14 number's somewhere around 5,000 out of 30-some-thousand that
15 were only recovered by the FBI. So at this point, today, we
16 know we do not have a complete set of Secretary Clinton's
17 emails. So the remedy portion of the discovery that we're
18 seeking --

19 THE COURT: I'm not sure I understand that.

20 MS. COTCA: So part of the remedy that we're
21 asking for -- I mean, because we know that we don't have all
22 of Secretary Clinton's emails with respect to her work at
23 the State Department, what avenue we're looking at --

24 THE COURT: The FBI got another 5,000 that were
25 not turned over to State, then?

1 MS. COTCA: No, no, no.

2 THE COURT: What --

3 MS. COTCA: When the FBI did its investigation and
4 turned over the records to the State Department, I believe
5 it was only able to recover somewhere close to 5,000 of the
6 30-some-thousand that Secretary Clinton did not turn over
7 and deleted.

8 THE COURT: Oh.

9 MS. COTCA: I believe that's -- that's the
10 information I have and I believe that's what's in front of
11 Judge Boasberg.

12 So knowing that we don't have a complete set of
13 Secretary Clinton's emails, one avenue that we're
14 approaching in this case is, how do we get a complete record
15 of her records from the time that she was at the State
16 Department? And one way is -- and we've asked -- and I
17 think this is a fairly -- a very reasonable and basic
18 request from the State Department which the State Department
19 has refused -- give us a list -- and we're asking this from
20 the State -- from Secretary Clinton -- a list of the
21 custodians who she corresponded with so we know where else
22 to look. If she doesn't have them, where else are her
23 emails that we can gather them and so there's a complete
24 set?

25 So those are the two broad spectrums of what we're

1 seeking in this case, generally, but I believe that -- and
2 I'm happy to go over each deponent or the document requests,
3 if the Court has any --

4 THE COURT: Where are those set forth? In your --

5 MS. COTCA: These are in our revised discovery
6 material.

7 THE COURT: Which is --

8 MS. COTCA: It is --

9 THE COURT: -- No. 50?

10 MS. COTCA: ECF 50. Correct.

11 THE COURT: Right. Okay. And then in their 51,
12 did you -- you did not file a reply to their 51; right?

13 MS. COTCA: We did not.

14 THE COURT: Okay. So you -- can you help me with
15 their arguments there.

16 MS. COTCA: Well, what we'd -- we -- nothing in
17 this case -- I mean, the discovery that has occurred in
18 Judge Sullivan's case -- because I believe the State
19 Department's main argument is there's all this discovery
20 that has happened, so there's nothing that needs to be done
21 in this case. Nothing that we're seeking in this case was
22 sought in the Judge -- in the case that's pending before
23 Judge Sullivan, and then to what Your Honor was stating
24 earlier, time may have passed. There may have been other
25 discovery done, but the facts in this case don't change.

1 The facts don't change that back in November and September
2 of 2014, the State Department informed Judicial Watch in
3 this case that its search has been complete and, at that
4 time, we know now the State Department --

5 THE COURT: And that's a career State Department
6 employee.

7 MS. COTCA: Correct.

8 THE COURT: Hackett.

9 MS. COTCA: Correct. I have to go back and look.
10 I --

11 THE COURT: Well, that's the affidavit I relied
12 on, I guess.

13 MS. COTCA: Yes.

14 THE COURT: Right.

15 MS. COTCA: It would be whichever one was
16 produced. Correct.

17 THE COURT: Yeah.

18 MS. COTCA: And we know at that time, the State
19 Department was in conversations with Secretary Clinton for
20 delivery of her emails to the State Department, and the date
21 that -- on December 4th is the same day when the State
22 Department received those emails and Judicial Watch was in
23 conversations with the State Department at the time with
24 respect to the posture and we said, Well, you know, the fact
25 that -- where are Secretary Clinton's emails raises

1 questions to Judicial Watch. So we requested a search
2 declaration, and that's at the point when the State
3 Department said, Oh, we need more time because we have some
4 more emails to search; however, never did they inform that
5 to Judicial Watch; never did they inform that to the Court.
6 So those facts don't change, and none of this has been
7 explored in any of the discovery that I'm aware of, and I
8 participated in the discovery that was taken in front of
9 Judge Sullivan.

10 THE COURT: Now, did the -- part of the issue
11 still is whether the -- whether there was a search of the
12 emails of employees who were corresponding -- who had their
13 own emails not on the server. Were those ever retrieved by
14 State and then searched or not?

15 MS. COTCA: I believe that those have been
16 retrieved by State. They were requested by the State
17 Department. And I believe it was Cheryl Mills, Philippe
18 Reines, Huma Abedin and Jacob Sullivan.

19 THE COURT: Okay.

20 MS. COTCA: But we've asked them to search those
21 and I -- as far -- in this case, the State Department has
22 not -- as of today, we are not aware of them searching them
23 or producing those part of the records.

24 THE COURT: Okay. But that's part of what you're
25 still seeking?

1 MS. COTCA: Correct. And we think that would
2 be -- that would be required for the State Department to
3 meet its obligations under FOIA.

4 THE COURT: Right. Now, how do we -- I think I
5 understand your position, then. So let me hear from Mr.
6 Prince.

7 MS. COTCA: Okay. Thank you.

8 THE COURT: Did you want to consult Mr. Fitton
9 first before I -- go over your other questions before --

10 MS. COTCA: No.

11 THE COURT: Okay. Mr. Prince?

12 MR. PRINCE: Thank you, Your Honor.

13 First of all, before I really get into the
14 Government's argument, there were serious misrepresentations
15 that were just made to you. Judicial -- State offered to
16 Judicial Watch to make those searches before Judicial Watch
17 ever asked. This was after the motion for summary judgment
18 was filed because State didn't have them when the motion for
19 summary judgment was filed. We did get some records. We
20 got records from Mr. Sullivan and Ms. Mills and we asked for
21 a brief extension -- I believe it was one week, but it might
22 have been two -- to do that search, and we did, and then
23 that is included -- that description of that search is
24 included in the declaration attached to the motion for
25 summary judgment. The rest came in in, I believe, August of

1 that year while briefing was still going on. And I
2 contacted Ms. Cotca and I offered to do that search, but we
3 would need to stay the briefing so that we could get the
4 search done and so we could be briefing what the actual
5 facts were. That was declined. I made a point of noting
6 that in the last filing I made. It's in the footnote on the
7 second page, and that was a long footnote because we had
8 just learned that they were expanding their discovery
9 request. And so that footnote was made at the last minute
10 just to address those expansions, but it is absolutely not
11 --

12 THE COURT: That was on the stay?

13 MR. PRINCE: What was that?

14 THE COURT: On the stay?

15 MR. PRINCE: No, I'm sorry, on the filing we made
16 in January of 2017. Our --

17 THE COURT: Oh, oh, oh.

18 MR. PRINCE: -- ECF 51. And the point is that we
19 offered to do that and we wanted a stay to do that so that
20 when briefing was done, it could be on the current state of
21 the case. That offer was declined vociferously by Ms. Cotca
22 herself in a telephone conversation. State made that offer
23 then. We're certainly ready to discuss it now, but there
24 hasn't been any real opportunity to make -- have discussions
25 because the case has, essentially, been de facto stayed.

1 THE COURT: Right.

2 MR. PRINCE: The other thing -- Your Honor, in
3 December -- in November of 2014, I had discussions with Ms.
4 Cotca about resolving this case hopefully without further
5 adjudication. We provided a Vaughn index; then we provided
6 -- we agreed to provide a search -- a draft search
7 declaration. As soon as we learned of the Clinton emails,
8 the people working on this case -- not talking about other
9 people in State who didn't know this FOIA request existed --
10 we had discussions and then I contacted in mid-January --
11 which is when we had figured out what was going on. This
12 was a very complicated issue. And we -- there are also
13 55,000 pages. That's many Bankers Boxes. So I approached
14 Judicial Watch -- this wasn't something they brought up --
15 and I said we needed to search emails. Now, we didn't say
16 whose emails they were, but we never reveal what searches
17 we're doing in the course of doing searches unless we're
18 actually negotiating, and negotiating wasn't going to occur
19 until after we did a draft search declaration. It's
20 perfectly normal for any agency to conduct its searches
21 without necessarily filling everyone in on the searches it's
22 conducted. We said they were emails and that they needed to
23 be reviewed and then they were reviewed, and this was at
24 State's own initiative because State was making a good-faith
25 basis to provide the responsive documents.

1 And then in March when the news broke, there were
2 several motions made in this case and status reports seeking
3 relief, and we noted then and have noted continually since
4 that State has always done this on its own. It wasn't
5 hiding anything. It actually did the search, as everyone
6 seems to want us to do. We did it. And so I don't think
7 it's true to say we misled either Judicial Watch or the
8 Court. The people involved in this case on -- both here and
9 at State were not the ones who knew about this. It was
10 other people who were dealing with it at a search that we --
11 that the people conducting this FOIA search thought was
12 done. There was no reason to do further investigation and,
13 yet, as soon as the information was made available on its
14 own --

15 THE COURT: I don't understand that. The State
16 Department told me that it had produced all the records when
17 it moved for summary judgment and you filed that motion.
18 That was not true when that motion was filed.

19 MR. PRINCE: At that time, we had produced all --

20 THE COURT: It was not true.

21 MR. PRINCE: Yes, it was -- well, Your Honor, it
22 might be that our search could be found to be inadequate,
23 but that declaration was absolutely true.

24 THE COURT: It was not true. It was a lie.

25 MR. PRINCE: It was not a lie, Your Honor.

1 THE COURT: What -- that's doublespeak.

2 MR. PRINCE: No, it's not. Your Honor, I take
3 this extremely seriously. That affidavit was vetted
4 extensively. It mentioned that the emails came in after.
5 It mentioned that Sullivan, Mills and -- that Sullivan and
6 Mills had provided emails and that they had said they might
7 provide more and that Abedin might provide more. That's in
8 the declaration, Your Honor. It says, Here's what we did
9 and here's what we don't know about, but since we don't have
10 them, we're moving for summary judgment.

11 Now, it's been made clear in rulings by various
12 courts that, basically, the courts are going to expect us to
13 search items that come in afterward in this instance, and
14 that's understandable, but at the time, that was not at all
15 clear, you know? There's strong precedent saying that items
16 not in State's possession do not need to be searched. And
17 in this case, the -- State actually searched things that
18 were not in their possession at the time of the FOIA search,
19 two different batches, and notified the Court and Judicial
20 Watch that there were more of the types of emails they had
21 already searched that could be coming in and, in fact,
22 informed Judicial Watch when they did come in and offered to
23 search them, but at the time, State searched everything in
24 its possession and that's what the affidavit says, and there
25 was no attempt --

1 THE COURT: And that's because the Secretary was
2 doing this on a private server? So it wasn't in State's
3 possession?

4 MR. PRINCE: No --

5 THE COURT: So you're playing the same word game
6 she played?

7 MR. PRINCE: Absolutely not, Your Honor. I am not
8 playing that. The motion -- at the time of the motion for
9 summary judgment, the 55,000 pages of emails had been
10 searched. That's true. They were searched. The search was
11 done before it became public that Clinton had used an email
12 server. That search was done and it was finished before
13 Judicial Watch filed, then, a motion for a status
14 conference, bringing this to the Court's attention, and
15 that's why I think there's some confusion. I understand if
16 Your Honor thinks that the searches that were done up to the
17 motion for summary judgment were inadequate, but being wrong
18 about the search being adequate does not make it a false
19 affidavit. There's tons of affidavits which, unfortunately,
20 the Government learns are not adequate --

21 THE COURT: So you're saying the 55,000 were
22 searched before the Hackett affidavit?

23 MR. PRINCE: That's absolutely true, Your Honor,
24 and that's in the Hackett affidavit.

25 THE COURT: I'll have to go back and look at that.

1 MR. PRINCE: Okay. Your Honor, if you'd like, I'd
2 like -- I can make a filing on this matter because it's
3 extremely important to us --

4 THE COURT: No, I'll go back and look at it.

5 MR. PRINCE: Okay. The other -- so the point
6 is -- you mentioned that you think the Government needs to
7 search the Mills, Abedin and Sullivan --

8 THE COURT: Right.

9 MR. PRINCE: -- documents that they've provided.
10 We've offered to do it, and that offer basically still
11 stands. So we never actually said we wanted to just move on
12 to another summary judgment motion. We said we wanted to
13 confer and, maybe, this time, get some answers on what it is
14 that we want to be searched, and we're happy to do that
15 search at this point. We actually think we could have that
16 done by December 17th, say. Okay?

17 But in addition to that, I think there had been
18 additional searches that are very relevant to this case that
19 I think it's important for Your Honor to know about, and
20 there's been no opportunity to provide them up until now.
21 This has all happened since our last filing.

22 THE COURT: What are those?

23 MR. PRINCE: Okay. First of all, there is a case,
24 15-692. It was brought by Judicial Watch. I handled that
25 case. It was in front of Judge Mehta. That case asked for

1 all emails to or from Secretary Clinton that were about the
2 Benghazi attacks. So in one sense, it was broader than this
3 search in that it was a broader topic. In another sense, it
4 was narrower in that it was only looking for emails to or
5 from Clinton, whereas this search scope is everything in the
6 office of the Secretary. Okay? That search -- that
7 settled. In that, the 55,000 were searched; everything
8 provided to State by the FBI was searched, and that includes
9 both sets provided, you know? There was a set provided
10 earlier and then a set that was found right before the
11 election in 2016, and those were searched and documents were
12 produced and the parties settled that case. Now, I'm not
13 citing that as evidence of anything except that in their
14 possession are all Clinton emails about the talking points.
15 And as for whether we can rely --

16 THE COURT: The one I recently ruled on had
17 talking points, as well.

18 MR. PRINCE: Were they Benghazi talking points?
19 I'm not familiar with that one.

20 THE COURT: I don't think they were.

21 MR. PRINCE: Okay. So --

22 THE COURT: Yeah.

23 MR. PRINCE: But the other thing to note is how
24 thorough the FBI investigation is. Judge Boasberg issued an
25 opinion on that in a Federal Records Act case.

1 THE COURT: Right.

2 MR. PRINCE: And while the issue before the court
3 was different, he did make factual findings that said the
4 FBI supervisory agent was credible when he said there's no
5 steps that they can anticipate taking -- and the FBI can
6 take more steps. They can get warrants which they did --

7 THE COURT: Right.

8 MR. PRINCE: -- they can get subpoenas. There are
9 no steps that the FBI can conceive of taking that would
10 feasibly lead to more emails to or from Secretary Clinton.
11 So that's why, when I say we've searched the FBI files,
12 there's nothing more to be done. The idea that we need to
13 --

14 THE COURT: To find more files?

15 MR. PRINCE: Well, those are the files that were
16 --

17 THE COURT: To find more emails?

18 MR. PRINCE: Oh. Find more emails?

19 THE COURT: Right.

20 MR. PRINCE: Apologies, Your Honor.

21 THE COURT: Right, right.

22 MR. PRINCE: Okay.

23 THE COURT: That's what the FBI would say?

24 MR. PRINCE: That's correct, and that was found to
25 be credible.

1 THE COURT: And the IG would agree?

2 MR. PRINCE: I believe so, but the IG report came
3 out before that statement from the FBI came out. So I can't
4 say whether or not.

5 THE COURT: Right.

6 MR. PRINCE: But extensive efforts were made,
7 including looking at people who Clinton emailed; right?
8 Sixty-eight percent of her emails were to Ms. Abedin, Ms.
9 Mills and Mr. Sullivan, and the FBI went and interviewed
10 other emails [sic] and they asked for access to a variety of
11 people's emails to get any emails to or from Clinton, and
12 they did, and the servers were -- the FBI got things from
13 the servers; they subpoenaed service providers for different
14 ISPs or telecom providers. There was a lot done, and that
15 opinion explains it fully.

16 THE COURT: Where is that?

17 MR. PRINCE: That is 15-785, Document 58. And
18 Judicial Watch was a party to that case and so was Cause of
19 Action. It was not technically against the Department as a
20 whole but against the Secretary in his official capacity.
21 So the parties are in comity here.

22 THE COURT: Okay.

23 MR. PRINCE: So that --

24 THE COURT: That's Judge Boasberg's opinion?

25 MR. PRINCE: Correct.

1 THE COURT: At 58?

2 MR. PRINCE: Yeah.

3 THE COURT: Okay.

4 MR. PRINCE: Now, the other search that was done
5 was of Abedin -- Ms. Abedin's emails. Okay? The FBI, as
6 you know, found emails -- they actually got a warrant for
7 her personal computer and found some additional emails.
8 Those were all searched both for this case -- and that
9 wasn't just searching for Clinton emails because this case
10 is more than that; we recognize that -- and all of them, all
11 of her emails to a non-state.gov account had been produced
12 to Judicial Watch specifically and publicly posted, and that
13 production was done earlier and that case was settled. I
14 might not have the cite to that, but let me check really
15 quickly.

16 (Brief pause.)

17 I believe that was 15-684 before Judge Howell.
18 The -- Judicial Watch challenged the adequacy of that search
19 and then withdrew that challenge after State provided more
20 information in an opposition brief.

21 THE COURT: And what was the search for?

22 MR. PRINCE: The search was for the -- all agency
23 -- all emails to or from Ms. Abedin on a non-state.gov email
24 account. And, obviously, Ms. Abedin's state.gov email was
25 searched for this case. So was the state.gov emails of the

1 other few people we've been talking about. So they -- and
2 in addition, all of the Clinton emails have been produced.
3 So not only have the ones about Benghazi been identified,
4 but all of the emails that State has gotten to or from Ms.
5 Clinton, the non-exempt portions -- and considering the ones
6 that are agency records, of course -- have been produced
7 publicly and specifically to Judicial Watch. 15-687 --
8 which is the cite that Ms. Cotca was looking for earlier --
9 is the case where those were produced where the --
10 basically, the -- all Clinton emails, including the first
11 batch of FBI docs that were not specifically from Ms.
12 Abedin's computer, and that was a large volume of material,
13 most of which were either duplicates or non-agency records.
14 They were purely personal.

15 THE COURT: And who's the judge in that one?

16 MR. PRINCE: That is Judge Boasberg, as well. And
17 Judge Moss had a similar request from a different plaintiff
18 and both of them had orders in the case about production.
19 And I believe that one was 15-1217, but I'm not positive.
20 It's not the same parties. So I didn't note it exactly.
21 But both judges oversaw the production of the FBI emails.
22 And, of course, Judge Contreras oversaw the production of
23 all the 55k. That was 15-123.

24 THE COURT: That was Leopold?

25 MR. PRINCE: Yes, that's Leopold which I'm very

1 familiar with.

2 The -- one thing that has come up is that there's
3 been some pretend surprise that there are so few documents
4 found. There's only four responsive documents found, I
5 believe. That's because this was not an office of the
6 Secretary issue. The -- I believe the documents that were
7 found were all documents discussing them afterwards,
8 although I can't remember for sure. It's been a while. But
9 it -- this was something that was done by Ms. Rice who was
10 in a different office, the Mission to the U.N. So there
11 shouldn't be a big surprise that the number is small. We're
12 talking just about the talking points. The number of
13 Benghazi-related documents was large, of course. And there
14 have been -- I've handled multiple FOIA requests on that,
15 and those are all done at this point.

16 So that's -- so the search, as far as we can
17 tell -- because Judicial Watch has all of Ms. Abedin's
18 emails and all of Ms. Clinton's emails to the best of the
19 FBI's ability, the only things that we can see remaining are
20 the Mills, Abedin and Sullivan docs that were produced and
21 that we've already offered to search and, again, could
22 complete by December 17th.

23 (Brief pause.)

24 THE COURT: Okay. All right. Anything else?

25 MR. PRINCE: Well, as to the discovery, there is

1 actually a lot of overlap between the requested discovery
2 and what happened in Sullivan and, certainly, with the FBI
3 investigation. We recognize that the FBI investigation is
4 not the same as discovery, but they released extensive
5 detail and, in fact, Judge Sullivan relied on how much extra
6 information there was in limiting the discovery in his case.
7 So it seems appropriate to do that here. Most importantly,
8 the 30 --

9 THE COURT: Are you doing the case before him?

10 MR. PRINCE: Before Judge --

11 THE COURT: Judge Sullivan.

12 MR. PRINCE: No, I was not, although I --

13 THE COURT: Do you know when that hearing is?

14 MR. PRINCE: I believe November 16th. Certainly
15 mid-November.

16 THE COURT: Okay.

17 MR. PRINCE: Okay. And the other thing to note is
18 that although Ms. Cotca said that Ms. Mills didn't answer a
19 lot of questions because of privilege assertions, that was
20 never challenged in that case. So if -- either they were
21 valid privilege assertions and so wouldn't be answered here
22 or Judicial Watch basically waived the right to challenge
23 that kind of thing. So there has been extensive discovery.

24 The 30(b)(6) motion that they're seeking covers
25 basically what was covered in the 30(b)(6) motion in the

1 other case, because that was about all types of searches
2 that involved emails which includes the scope of this one,
3 and that was -- that's an -- there's a large transcript
4 available to read on that. It was very detailed and very
5 thorough.

6 I think I've talked mostly about the FBI
7 investigation. The OIG report is available to read and you
8 said you read it. So you know what that is. It's also
9 important to note that Congress, the Benghazi Committee, did
10 their own investigation into this matter, as well. They
11 released an 800-page report not just on emails. It was also
12 on Benghazi. And, obviously, that was a very independent
13 investigation. That was not someone particularly
14 sympathetic to State.

15 THE COURT: Right.

16 MR. PRINCE: So --

17 THE COURT: I don't have that one and I had not
18 seen that one. Does it have a discussion of emails, too?

19 MR. PRINCE: It does.

20 THE COURT: It does?

21 MR. PRINCE: Yeah. In fact, let me -- oh, it also
22 includes transcripts of the public testimony of Ms. Clinton,
23 Ms. Mills, Ms. Abedin, John Bentel and Patrick Kennedy, all
24 who were people who have been deposed or otherwise subject
25 to discovery already. And that was very -- that was, you

1 know -- there was a lot of back and forth in that. I don't
2 know if you watched it, but it was very dramatic, especially
3 the Ms. Clinton -- the one for Secretary -- former Secretary
4 Clinton. So --

5 (Brief pause.)

6 So the --

7 THE COURT: What did the State IG do?

8 MR. PRINCE: I believe he made recommendations. I
9 don't remember precisely what they were at this point. He
10 did -- he released an 80-page report. It was highly
11 critical of the email practices -- of Clinton's email
12 practices, but it said it found no evidence, despite
13 extensive inquiry, that anyone at State approved --

14 THE COURT REPORTER: Can you slow down, please.

15 MR. PRINCE: My apologies.

16 There was no evidence found, despite extensive
17 inquiry, that anyone at State approved the use of the
18 server, and the FBI also found that there was -- the best
19 information the FBI had was that Secretary Clinton had not
20 used a personal email account to shield her correspondence
21 from public disclosure but rather for convenience. That's
22 not to say it didn't shield it, obviously, but we've taken
23 care of it in this case at least, and that was actually in
24 Director Comey -- then-FBI Director Comey's testimony in
25 front of the House. So that's publicly available, as well.

1 Also, Ms. Clinton's 302 is available. It is somewhat
2 redacted because there are issues --

3 THE COURT: Right.

4 MR. PRINCE: -- that couldn't be made public.

5 So that's our -- there are two broad areas that
6 Judicial Watch said that they were interested in. I think
7 an examination shows -- and we've addressed this in the
8 briefs -- that those interests are not served by all of the
9 discovery they're asking for; second, as one of those was
10 the remedy. And the FBI says that it can't find -- it can't
11 think of anything else it could feasibly do to find more of
12 Clinton's emails.

13 THE COURT: Now, where is that said?

14 MR. PRINCE: That is said in the Judge Boasberg
15 opinion in the FRA case. And I'm only relying on his
16 takeaway from that.

17 THE COURT: Right.

18 MR. PRINCE: Okay. And he found that --
19 "understandable" and "credible" were the kinds of words, I
20 think, he used. Now, he was dealing with mootness. So the
21 applicability of that is quite different than it would be
22 here, but he still accepted that assessment.

23 And then the other topic is evidence of bad faith
24 in responding to this request. Now, any bad faith -- I
25 think -- I hope I've cleared up that what seemed to be

1 thought of as bad faith and a false affidavit is not what it
2 -- how it was presented.

3 THE COURT: I have to go back and read it.

4 MR. PRINCE: Yes, please do. We highly encourage
5 that. But the upshot is that the search was done well
6 before the MSJ. And, in fact, the search of the Mills and
7 Sullivan --

8 THE COURT: Of the 55,000?

9 MR. PRINCE: Of the 55,000. And the Mills and
10 Sullivan documents that were produced before the MSJ, those
11 were also done. And that -- both of those were initiated by
12 us. Once -- in both cases, we approached Judicial Watch to
13 get the time to do that and really have a good search.

14 So I don't -- discovery isn't necessary there,
15 except as to the extent, maybe, of the purpose of the
16 server, but that was addressed in the Sullivan -- in the
17 discovery before Judge Sullivan; right? That was -- one of
18 the main topics in all the depositions was, was someone
19 trying to hide something? Who knew about this? Why wasn't
20 it known to the FOIA Department? That wasn't great. I
21 mean, yes, it would have been better if someone knew, but
22 it's clear it wasn't known and, therefore, that's not bad
23 faith on the part of fulfilling the FOIA request, whatever
24 may have been wrong with the way the records were actually
25 being handled.

1 And as far as FOIA goes, remember, the overarching
2 purpose is to find out what additional searches should be
3 done. And here, especially in light of the FBI
4 representation and our willingness to conduct the one bit of
5 searches we offered two years ago -- three years ago now, I
6 don't think there are any, simply, except for those
7 searches. And, certainly, it should be briefed. I mean, so
8 much more has been done that there should be an opportunity
9 to present that to the Court. Your Honor said that rare --
10 the rare circumstances that justify FOIA exist, but those
11 circumstances have radically changed now. There's more
12 information and none of it has really been formally
13 presented to you, as you've said. There's not been an
14 opportunity at this point.

15 So we'd like to complete the searches and then
16 brief that. And, of course, we're happy to discuss with
17 Judicial Watch. If there's a way to bring this case to a
18 close, we'd be happy to seek that. It doesn't sound like
19 that's likely. I admit that. But at least let us do the
20 searches we have agreed to do and then also sum up all the
21 other searches and how they affect this case before any
22 discovery is ordered, if discovery is still warranted,
23 which, we would argue, it's not.

24 THE COURT: All right.

25 MR. PRINCE: Thank you.

1 MS. COTCA: May I, Your Honor, respond --

2 THE COURT: Yes.

3 MS. COTCA: -- on a couple of issues that were
4 raised?

5 First, the State Department approached Judicial
6 Watch and was hoping to resolve the case back in December of
7 2014 before even we had any idea the 55,000 emails had not
8 been searched from Secretary Clinton. So that's where --
9 that's what's led to the posture where we are today in this
10 case.

11 Second of all, with respect to the search of the
12 additional emails that were returned by Cheryl Mills, Huma
13 Abedin, Jacob Sullivan and Philippe Reines, it -- I
14 emphatically disagree with opposing counsel that Judicial
15 Watch refused and declined State Department's offer to
16 search those emails and provide whether any are responsive
17 and produce them in this case. Never have I -- in the
18 history of Judicial Watch since I've been working there,
19 have I declined if the State Department or any agency says,
20 We have some records that we believe are potentially
21 responsive and we just need time to search them and produce
22 them to you and I've said, No, thank you very much. So
23 respectfully, I disagree with opposing counsel's
24 representation as to that issue.

25 I want to address with respect to -- and Mr.

1 Prince was accurate. The case that was pending in front of
2 Judge Mehta, Case 15-692 where we requested all of Secretary
3 Clinton's emails about Benghazi, that was strictly for
4 Secretary Clinton's emails. Emails that may have occurred
5 between Jacob Sullivan/Cheryl Mills, let's say, from their
6 personal accounts about Benghazi or the talking --
7 specifically about the talking points, if there is such an
8 email, that would be responsive in this case, and that was
9 not covered in that case.

10 Also, with respect to the -- opposing counsel went
11 on at length about the case before Judge Boasberg where
12 Judge Boasberg found that what the FBI had done was
13 sufficient and complete. That case is actually on appeal
14 and Judicial Watch does not agree with how the court
15 concluded in that case and I believe it's coming up very
16 soon on appeal. I don't have the exact -- I can actually
17 look it up for you, if you need the exact date, but Judicial
18 Watch does not agree that everything that has been done by
19 the FBI was complete.

20 And, for example, we do not have -- I mean, and
21 the -- I can go back to a different agency and, sort of --
22 it's somewhat similar to this case, right, with the IRS,
23 let's say, what happened, and the Tea Party organizations,
24 and then finding out that Lois Lerner's emails were lost and
25 then the IRS actually deleted the backup records -- the

1 backup disc and tapes from those emails. What the IRS
2 did -- and, frankly, what the State Department and what
3 Judicial Watch has requested for several years now since
4 this case has been pending for so long -- is provide a list
5 of custodians whom Secretary Clinton communicated with. IRS
6 was -- I think it was over 100 custodians who Lois Lerner
7 communicated with. They went ahead and they compiled all
8 those emails. The search took a little bit longer, but it
9 was done and it's concluded. Why the State Department has
10 refused to do that in this case is beyond me, but that is
11 part of what we're requesting, and that's part of what we
12 have been requesting.

13 With respect -- specifically, because Cheryl
14 Mills's deposition was brought up -- and that was taken in
15 13-1363 -- Cheryl Mills refused to respond to questions
16 about the collection of emails and Secretary Clinton's
17 emails not based on a privilege but based on out-of-scope
18 objection, and that out-of-scope objection was made by the
19 State Department as well as Secretary -- as well as Ms.
20 Mills's private attorneys, and Ms. Mills did not respond to
21 questions because they deemed that those questions were out
22 of scope of the discovery that Judge Sullivan had permitted
23 in that case. So we don't believe that that has been
24 covered and it's not a matter of, you know, bringing the
25 objection of privilege before Judge Sullivan. It's a

1 different issue. And so because we do have discovery in
2 this case, Judicial Watch said, That's fine. This is
3 actually more relevant and pertinent to what's happening in
4 this case.

5 And, you know, with respect to evidence of bad
6 faith, Your Honor, this case, it's been pending since 2014.
7 In the summer of 2014, the State Department was
8 communicating about Secretary Clinton's emails at the State
9 Department. State Department represented to Judicial Watch
10 that it had concluded its search. It provided a draft
11 Vaughn index. There should be good faith from the agency
12 that it has done what it's saying it's doing when responding
13 to a FOIA request or that it's pending in a litigation. And
14 I would just point the Court to one of the such documents
15 that we're seeking actually for redactions to be removed.
16 It's in Document 50-1, Page 37 of 37. It's an email between
17 Finney Clarence [sic], who is at the State Department and he
18 was handling the document request, and Jonathon Wasser and
19 James Bair; subject: Former Secretary Clinton's email
20 account. All of the emails are completely redacted -- the
21 substance of the emails are completely redacted, and this is
22 August 8th, 2014, when the State Department was responding
23 to Judicial Watch's FOIA request in this case. So the fact
24 that there isn't evidence of bad faith in this case, we
25 simply disagree. Judicial Watch would simply disagree with

1 that.

2 Oh, and with respect to the State IG's report --
3 the Inspector General's report -- I believe -- I don't have
4 that with me, but it concluded that FOIA was obstructed
5 based on the handling of the -- Secretary Clinton's use of
6 her email server. And I believe that Cheryl Mills -- at
7 least Cheryl Mills actually did not agree to speak with the
8 State IG when it was doing its investigation which, I think,
9 is quite pertinent and important when the Court is
10 considering the discovery that Judicial Watch is asking for.

11 I think I've covered all the points. If Your
12 Honor has any questions, I'm happy to address them.

13 THE COURT: Thank you.

14 MR. PRINCE: Your Honor, on September 8th, 2015,
15 we filed our opposition to the 56(d) motion and we --

16 THE COURT: That's 51?

17 MR. PRINCE: That -- no, the -- I'm sorry, Your
18 Honor, that's Document 27. It's way back.

19 THE COURT: Oh.

20 MR. PRINCE: And I'm on -- looking at Page 3 and
21 I'm about two-thirds of the way down. We stated that,
22 Despite the fact that it had no obligation to do so, State
23 was willing to stay summary judgment briefing and ask the
24 Court to set a schedule to allow it to search those
25 documents for records responsive to the FOIA request. Those

1 records in this case are the records received by Mr. -- from
2 Mr. Sullivan, Ms. Mills and Ms. Abedin after the motion for
3 summary judgment was filed. The parties were unable to
4 reach agreement regarding a schedule for such a search. So
5 that's evidence that that discussion did happen. Now --

6 THE COURT: What number is that? 27?

7 MR. PRINCE: 27.

8 THE COURT: Okay.

9 MR. PRINCE: And in the reply to that, there's no
10 mention of this particular sentence.

11 THE COURT: What note is that?

12 MR. PRINCE: I'm sorry?

13 THE COURT: Is that a footnote?

14 MR. PRINCE: No, it's not a footnote. It's a --

15 THE COURT: Page what?

16 MR. PRINCE: It's a major paragraph on Page 3.

17 THE COURT: Okay.

18 MR. PRINCE: It starts a little more than half-way
19 down.

20 THE COURT: All right.

21 MR. PRINCE: And I think this is really crucial.

22 Now, it is true that we refused to search Reines's emails
23 because Reines is not in the office of the Secretary and

24 this search was limited to the office of the Secretary --

25 actually, it's not quite true that we refused. We said, as

1 part of a global settlement, we might be willing to consider
2 it, but absent that, we're not willing to conduct that
3 extensive search and we don't think it's necessary, which is
4 a valid position to take, even if it ends up being wrong.

5 And as far as bad faith goes, it's true that we
6 told Judicial Watch we were done -- State was done when it
7 was not done, but what it did on its own was conduct that
8 search. So it's not -- it's hard to say that's bad faith.
9 We found out -- we got the emails and searched them. That's
10 what's supposed to happen in a FOIA case. Now, ideally in
11 the FOIA case, those records would have been at State. Of
12 course, not having those records made some FOIA cases not be
13 resolved correctly or made -- it obstructed FOIA. There's
14 no -- we're not arguing that. We're saying that whatever
15 obstruction did occur because of it has been resolved by
16 this point by a lot of work by a lot of people in a lot of
17 agencies.

18 Thank you.

19 (Brief pause.)

20 THE COURT: Now, your suggestion today of what you
21 could do by December 17th is just those three?

22 MR. PRINCE: That's correct, Your Honor.

23 THE COURT: All right. And the -- now, would you
24 help me with the chronology. Your statement about the
25 Hackett affidavit is -- how did the chronology work?

1 Hackett -- what was it that Hackett said?

2 MR. PRINCE: Hackett -- this is referring
3 specifically to his affidavit attached to our motion for
4 summary judgment.

5 THE COURT: Yeah.

6 MR. PRINCE: Okay. And that was, of course, dated
7 July 7th, 2015.

8 THE COURT: All right.

9 MR. PRINCE: In that, he describes the searches.
10 He describes the --

11 THE COURT: Well, when did the secret email stuff
12 become public?

13 MR. PRINCE: That became public in March.

14 THE COURT: Of?

15 MR. PRINCE: Of 2015.

16 THE COURT: Of '15?

17 MR. PRINCE: Correct, but our search of those
18 emails began much earlier than that. In fact, our search
19 was completed by the time Judicial Watch approached us about
20 this issue.

21 THE COURT: Right.

22 MR. PRINCE: So -- okay. And so he says -- this
23 is in 19-2 on -- okay. Hold on.

24 (Brief pause.)

25 Okay. In Paragraph 17, Mr. Hackett describes the

1 receipt of the 55,000 and how they were searched.

2 Essentially, because we didn't have time to put them in a
3 system to do this, they scan them into PDFs and hit control
4 F on all of the search keys, and that's what he describes
5 and that was done. It was done at least two months
6 earlier -- no, I'm sorry, at least four months earlier than
7 this was filed because they were done before, I think, March
8 4th when Judicial Watch approached us. So they'd been done
9 for a while.

10 Then he describes that -- in Paragraph 20 which is
11 on Page 8 of that declaration, he describes the receipt of
12 documents from Ms. Mills and Mr. Sullivan and the review of
13 those documents. Those were reviewed by the legal advisor
14 helping on this case.

15 And I believe -- I'm looking for a footnote very
16 quickly.

17 (Brief pause.)

18 Okay. In Footnote 4 of the actual motion -- not
19 the declaration; that's on Page 10 -- counsel for the three
20 individuals -- that's Abedin, Sullivan and Mills -- informed
21 the Department that they may provide a further response to
22 the letter in the future. Oh, that's in the Hackett
23 declaration at Paragraph 19. And it said if the Department
24 receives any additional documents that relate to the subject
25 matter of the FOIA request, the Department will advise

1 Judicial Watch so that the parties can discuss how to
2 address the documents. That's exactly what we did and we
3 described that in our opposition to the 56(d) motion. We
4 also mentioned it again in January of '17. To date, none of
5 Judicial Watch's written filings contest that.

6 THE COURT: Right, right.

7 MR. PRINCE: So that's -- I think it's -- that's
8 the --

9 THE COURT: Okay. Well, I must have misremembered
10 what I was saying to you originally, because I don't recall
11 that that way. Okay.

12 MR. PRINCE: Thank you, Your Honor.

13 MS. COTCA: Your Honor --

14 THE COURT: Yes.

15 MS. COTCA: -- I would just point to the fact that
16 in February of 2014, one month before it became public in
17 the New York Times of Secretary Clinton's use, the parties
18 did file a joint status report at that time and the State
19 Department still did not provide to the Court at that time
20 the extraordinary situation with respect to Secretary
21 Clinton's emails as well as these other individuals' emails
22 who were using private email accounts. Judicial Watch
23 believes, at that point, had the State Department wanted to
24 be candid with the Court and be forthcoming with the
25 information, February, for certain, at that point, it had

1 all of Secretary Clinton's emails; knew Secretary Clinton
2 was communicating with Cheryl Mills, Huma Abedin, Jacob
3 Sullivan. They were her closest advisors. And there were
4 these emails that had not even been -- I don't even believe
5 they had been even searched at that point, but I would just
6 say there had been representations to the Court prior to the
7 March 5th -- 5, 2015, where the State Department was not
8 forthcoming with its processing of this particular FOIA
9 request not only to the plaintiff back in November,
10 September and December of 2014 but also to the Court in
11 2015.

12 MR. PRINCE: Your Honor, that was a status report
13 setting a schedule -- proposing a schedule and, as a habit
14 -- and it's good practice -- we do not disclose the
15 mechanics of what we're searching while it's going on
16 because that leaves us more freedom. If we find something
17 new to search, we just search it, and then we don't have to
18 have arguments about it. It's not required to produce it.
19 This was different. Maybe, you know, Your Honor might wish
20 we had, but it certainly was not any kind of bad faith with
21 respect to hiding it. It was normal FOIA practice to not
22 disclose that kind of information in such a status report.

23 THE COURT: All right. Thank you very much,
24 Counsel.

25 THE DEPUTY CLERK: All rise. This Honorable Court

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now stands in recess.

(Proceedings concluded at 10:59 a.m.)

* * * * *

CERTIFICATE OF OFFICIAL COURT REPORTER

I, TIMOTHY R. MILLER, RPR, CRR, NJ-CCR, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability, dated this 15th day of October 2018.

/s/Timothy R. Miller, RPR, CRR, NJ-CCR
Official Court Reporter
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